



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201009015**

Release Date: 3/5/10

Date: 12-8-09

UIL Code: 501.36-00

501.33-00

501.03-08

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038(CG) (11-2005)
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: 12-8-10

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend

UIL Nos: 501.03-08

501.33.00

501.36.00

A = Name of Individual

B = Date

C = Name of State

Dear

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

ISSUE:

Do you qualify for recognition of tax exemption under section 501(c)(3) of the Code?

FACTS:

You are a corporation formed on B, and operate pursuant to the laws of the State of C. Your amended Articles of Incorporation provide that you are formed exclusively for charitable, religious, educational and scientific purposes.

You are organized, directed and managed by one person. A is your sole board member and serves as your President, Secretary and Treasurer. Your Bylaws state that you may have shareholders.

In your application, you describe that you will provide counseling to assist an individual in paying creditors in full instead of the alternative of filing for bankruptcy. This will involve discussing the individual's particular financial situation and devising and implementing a plan to pay both past and present creditors. However, you also state that your are formed to comply with the United States Trustee Program to provide credit counseling that is required for individuals to file for bankruptcy.

You clarified your activities through your correspondence by stating the following:

The program offered will be **strictly limited to credit counseling to an individual or entity contemplating filing for bankruptcy**. According to current law the United States Trustee requires an individual to undergo credit counseling "prior" to filing for bankruptcy. The goal is to analyze an individual's income, expenses, assets, and liabilities to assist them in an alternative plan to avoid filing for bankruptcy and to educate the individual in their current financial situation. The Corporation will conduct an interview with the client either by phone or in person at the office. The interview will be conducted by A, Certified Public Accountant. The total time that will be devoted to the program will depend on the number of clients. The time planned on being devoted to a client is between 60 and 90 minutes.

You describe your pre-bankruptcy certification program as follows:

The client will initiate the process by contacting their attorney for the purpose of filing bankruptcy. The attorney will advise the client that under the law, before they can file for bankruptcy, they are required to undergo credit counseling. The attorney will refer the client to [you]. Each attorney will have an identifying number they give to the client so when they call [you] they know which attorney they are dealing with. Upon receiving the referral [you] will make an appointment with the client for the credit counseling session. The counseling session will take place at the office or by telephone. The session will involve analyzing the client's financial situation including income, fixed and variable expenses, assets, total secured and unsecured indebtedness and any current delinquencies. The counselor will educate the client about budgeting, money management, financial planning, and goal setting and the use of credit. There will be a review of the factors that led to their seeking bankruptcy. The analysis and education will be useful in preventing the filing of bankruptcy if possible and if not possible useful for post bankruptcy. [You] will issue a certificate of counseling to the individual and also forward a copy to the attorney. The certificate of counseling is important in that it is required by law as proof that the individual received the credit counseling. The attorney is required to retain a copy in the [client's] file."

You provided examples of the financial information you collect and the advice you offer to your clients during your counseling sessions. During your counseling session, you collect budget information including income and expenses as well as assets and liabilities from each client.

In carrying out your pre-bankruptcy certification program, you ask clients the following six questions:

- What are your current financial goals and objectives?
- Is there anything in particular that you are currently concerned with regarding your financial situation?
- Are you anticipating any major lifestyle changes that could involve money (retirement, divorce, inheritance, children going to college, health issues)?
- Have you made any financial decisions you regret?
- Are you borrowing to pay for items you once paid for with cash?
- Is an increasing percentage of your income going to pay debts?

In your analysis of the client's situation and plan of action, you offer generic advice such as the client now has to reduce debt and monthly expenses. As for the reasons for financial hardship, you explain in broad terms that the client lacked a financial plan.

Your pre-bankruptcy certificate program is administered by A. You have no other counselors at this time. You will determine compensation to your counselor based on the standard in the industry. You state after the 60 to 90 minute discussion, your client and/or client's attorney receives a pre-bankruptcy certificate. You indicate that you require that a \$50.00 fee be paid. Although you state that you will offer fee waivers, you have not described your fee waiver policy or the specific criteria you use to determine eligibility of recipients for your fee waivers. You have not provided information as to how your fee waiver policy is made known to the public. You have also not shown evidence that you are an approved credit counseling agency under the United States Trustee Program.

You indicate on your application that you will not undertake any fundraising and do not have a fundraising program. According to your financial data, you have had zero income and expenses until 2009. Your projected income and expenses for 2009 are as follows:

PROJECTED INCOME AND EXPENSES - 2009	
Income:	
Gifts, grants and contributions received	2,500
Gross investment income	400
Fees from counseling sessions	32,400
<i>Total Revenue</i>	35,300
Expenses:	
Compensation of officers, directors	9,000
Occupancy	4,200
Depreciation	800
Professional fees	1,500
Materials and books	2,000
<i>Total Expenses</i>	17,500

You state that the availability of services is made known to individuals through various bankruptcy attorneys and being listed as an approved counselor with the bankruptcy court.

You represent that you will not limit your services to a particular class of people, such as minorities, low-income individuals or the elderly. "[The] criteria that must be met for a person to qualify for counseling is that the person has met with an attorney and is contemplating filing for bankruptcy. Any person contemplating filing for bankruptcy may contact [you]. There are no application materials necessary, just a referral by their attorney."

We inquired on how your board member/officer was selected and compensation was determined through an additional information letter. You responded with a copy of your Bylaws. Your Bylaws do not list the roles, responsibilities, compensation or selection process of your sole board member and officer.

LAW:

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of the net earnings inure to the benefit of any private shareholder or individual.

Section 501(q) of the Code states that an organization that provides credit counseling services will not qualify for exemption under section 501(c)(3) unless it is organized and operated in accordance with specific requirements. These requirements include that the organization provide credit counseling services tailored to the specific needs and circumstances of consumers. The organization's fee policy must indicate that the fees charged are reasonable and allow for the waiver of fees for consumers who are unable to pay.

At all times, the board of directors must be controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders. Not more than 20 percent of the voting power of the board of directors can be vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities. Furthermore, not more than 49 percent of the board may be employees of the organization, creditors, or those who will benefit financially.

Section 1.501(c)(3)-1(a)(1) of the Regulations provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) defines the words "private shareholder or individual" in section 501 to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations assigns the burden of proof to an applicant organization to show that it serves a public rather than a private interest and specifically that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and includes the relief of the poor and distressed or of the under privileged as well as the advancement of education.

Section 1.501(c)(3)-1(d)(3) of the Regulations provides that the term “educational” refers to:

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(e)(1) of the Regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization’s exempt purpose or purposes and if the organization is not organized or operated for the primary purposes of carrying on an unrelated trade or business.

In Revenue Ruling 69-441, 1969-2 C.B. 115, the Service found that a nonprofit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was exempt under section 501(c)(3) of the Code. Its Board of Directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications. It aided low-income individuals and families who have financial problems by providing them with individual counseling, and if necessary, by establishing budget plans. Under the budget plan, the debtor voluntarily made fixed payments to the organization, holding the funds in a trust account and disbursing the funds on a partial payment basis to the creditors. The organization did not charge fees for counseling services or proration services. The debtor received full credit against his debts for all amounts paid. The organization did not make loans to debtors or negotiate loans on their behalf. Finally, the organization relied upon contributions, primarily from the creditors participating in the organization’s budget plans, for its support.

The Service found that, by aiding low-income individuals and families who have financial problems and by providing, without charge, counseling and a means for the orderly discharge of indebtedness, the organization was relieving the poor and distressed. Moreover, by providing the public with information on budgeting, buying practices, and the sound use of consumer credit, the organization was instructing the public on subjects useful to the individual and beneficial to the community. Thus, the organization was exempt from federal income tax under section 501(c)(3) of the Code.

Outside the context of credit counseling, individual counseling has, in a number of instances, been held to be a tax-exempt charitable activity. Revenue Ruling 78-99, 1978-1 C.B. 152 (free individual and group counseling of widows); Revenue Ruling 76-205, 1976-1 C.B. 154 (free counseling and English instruction for immigrants); Revenue Ruling 73-569, 1973-2 C.B. 179 (free counseling to pregnant women); Revenue Ruling 70-590, 1970-2 C.B. 116 (clinic to help users of mind-altering drugs); Revenue Ruling 70-640, 1970-2 C.B. 117 (free marriage counseling); Revenue Ruling 68-71, 1968-1 C.B. 249 (career planning education through free vocational counseling and publications sold at a nominal charge). Overwhelmingly, the counseling activities described in these rulings were provided free, and the organizations were supported by contributions from the public.

In Revenue Ruling 61-170, 1961-1 C.B. 112, an association composed of professional private duty nurses and practical nurses that supported and operated a nurses' registry primarily to afford greater opportunities for its members was not entitled to exemption under section 501(c)(3) of the Code. Although the public received some benefit from the organization's activities, the primary benefit of these activities was to the organization's members.

Revenue Ruling 76-91, 1976-1 C.B. 149, state that where the purchaser is controlled by the seller or there is a close relationship between the two at the time of the sale, there can be no presumption that the purchase price represents fair market value because the elements of an arm's-length transaction are not present.

Section 4.03 of Revenue Procedure 2009-9, 2008-2 I.R.B., provides that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, the Service will generally issue a proposed adverse determination letter or ruling.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax-exempt purpose. "Among the major factors courts have considered in assessing commerciality are competition with for-profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, *inter alia*, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations."

In Consumer Credit Counseling Service of Alabama, Inc. v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978), the court held that an organization that provided free information on budgeting, buying practices, and the sound use of consumer credit qualified for exemption from income tax because its activities were charitable and educational.

The Consumer Credit Counseling Service of Alabama is an umbrella organization made up of numerous credit counseling service agencies. These agencies provided information to the general public through the use of speakers, films, and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. They also provided counseling on budgeting and

the appropriate use of consumer credit to debt-distressed individuals and families. They did not limit these services to low-income individuals and families, but they did provide such services free of charge. As an adjunct to the counseling function, they offered a debt management plan. Approximately 12 percent of a professional counselor's time was applied to the debt management plan as opposed to education. The agencies charged a nominal fee of up to \$10 per month for the debt management plan. This fee was waived in instances when payment of the fee would work a financial hardship.

The agencies received the bulk of their support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way. An incidental amount of their revenue was from service fees.

The court found the organizations exempt under section 501(c)(3) because providing information to the public regarding the sound use of consumer credit is charitable in that it advances and promotes education and social welfare. These programs were also educational because they instructed the public on subjects useful to the individual and beneficial to the community. The counseling assistance programs were likewise charitable and educational in nature. Because the community education and counseling assistance programs were the agencies' primary activities, the agencies were organized and operated for charitable and educational purposes. The court also concluded that the limited debt management services were an integral part of the agencies' counseling function, and thus charitable, but stated further that even if this were not the case, these activities were incidental to the agencies' principal functions.

Finally, the court found that the law did not require that an organization must perform its exempt functions solely for the benefit of low-income individuals to qualify under section 501(c)(3) or to provide its services solely without charge. Nonetheless, these agencies did not charge a fee for the programs that constituted their principal activities. They charged nominal fees for services that were incidental. Moreover, even this nominal fee was waived when payment would work a financial hardship.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services was not exempt under section 501(c)(3) because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, nor scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In American Institute for Economic Research v. United States, 302 F. 2d 934 (Ct. Cl. 1962), the Court considered an organization that provided analyses of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The court noted that education is a broad concept, and assumed *arguendo* that the organization had an educational purpose. However, the totality of the organization's activities, which included the sale of many publications as well as the sale of

advice for a fee to individuals, was indicative of a business. Therefore, the court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose, and was not entitled to be regarded as exempt.

In Easter House v. U.S., 12 Ct. Cl. 476 (1987), aff'd 846 F. 2d 78 (Fed. Cir 1988), the court found that adoption services were the primary activity of the organization. In deciding that the organization conducted adoption services for a business purpose rather for a charitable purpose, the court considered the manner in which the organization operated. The record established a number of factors that characterize a commercial activity and which were evident in the operations of Easter House also. The court determined that the organization competed with other commercial organizations providing similar services; fees were the only source of revenue; it accumulated very substantial profits, because it set its fees in order to generate a profit; the accumulated capital was substantially greater than the amounts spent on charitable and educational activity; and the organization did not solicit and did not plan to solicit contributions. The court also found a corporate-type structure in the classes of memberships (including a single life member having inherent power that the holder could transfer like stock), and dependence on paid employees.

In KJ's Fund Raisers, Inc. v. Commissioner, T.C. Memo 1997-424 (1997), affirmed 82 AFTR 2d 7092 (1998), the Tax Court found that another gaming organization was not exempt. While the organization raised money for charitable purposes, it also operated for the substantial benefit of private interests. The organization's founders were the sole owners of a bar, KJ's Place. The organization, through the owners and employees of KJ's Place, sold lottery tickets exclusively at KJ's Place during regular business hours. While in KJ's Place, the lottery ticket purchasers were sold beverages. The initial directors were the two founders and a related individual. The initial board was replaced several times until the two founders were no longer on the board. At all times these two individuals were the organization's officers. Salaries had been paid to them and rent had been paid to KJ's Place. The organization maintained that the fact that salaries and rent were no longer paid in this fashion indicated the independence of the board. The Court took another view: "Although those practices ceased and are not in issue here, the current board of directors is composed of at least the majority of the same members who allowed those amounts to be paid."

In Salvation Navy v. Commissioner, T.C.M. 2002-275 (2002), the court found that one of the reasons why the organization did not qualify for exemption from federal income tax was because it could not prove that its net earnings would not inure to the benefit of a private individual, its founder.

Harding Hospital, Inc. v. United States, 505 F.2d 1068 (6th Cir. 1974), provided that an organization seeking a determination letter or ruling as to the recognition of its tax-exempt status has the burden of proving that it satisfies all of the requirements of the particular tax-exemption category.

For an organization claiming the benefits of section 501(c)(3), "exemption is a privilege, a matter of grace rather than right." Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849, 857 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973). The applicant for tax exempt status under section 501(c)(3) has the burden of showing it "comes squarely within the terms of the law conferring the benefit sought." Nelson v. Commissioner, 30 T.C. 1151, 1154 (1958).

RATIONALE:

Based on our analysis of the information you submitted, we conclude that you do not satisfy the operational requirements of the Code and Regulations to be recognized as exempt under section 501(c)(3) of the Code. In fact, the administrative record demonstrates that you will operate for a substantial non-exempt commercial purpose. In addition, you have not established that your income will not inure to the benefit of your sole board member/officer, A.

According to the administrative record, you are operated for substantial non-exempt commercial purposes in contravention of section 501(c)(3) of the Code. Your primary activity is the provision of pre-bankruptcy certification for a fee. You devote all of your time and activities to selling pre-bankruptcy certifications to the general public under the guise of financial education. After the payment of a \$50 service fee, and a 60 to 90 minute counseling session in which information is collected from the client sufficient to create a budget, a pre-bankruptcy counseling certificate is issued enabling the client to file for bankruptcy. Analogous to the organization described in Better Business Bureau of Washington D.C., Inc. v. United States, *supra*, your activities appear to have an underlying commercial motive that distinguishes your educational activities from that carried out by a university.

You meet the factors cited in Airlie Foundation v. Commissioner, *supra*, exemplifying a commercial operation. Like a trade or business, your services are rendered in exchange for a fee. Like a for-profit business seeking to target its market base, you promote your services to bankruptcy attorneys. Rather than receiving referral of clients from governmental or social service agencies, you receive your referral of clients, who are on the verge of filing for bankruptcy, from bankruptcy attorneys. The information you present to the public prominently features your pre-bankruptcy certification services but does not mention that you provide any form of on-going interactive public educational program on financial matters. You do not limit your counseling services to a charitable class of individuals. Your income is derived primarily from fees charged from services rendered, and very little in the form of charitable contributions from the public. More than 92 percent of your income will be derived from the counseling fees paid by your clients. Moreover, you have provided no evidence that your fees will bear any relation to the costs of providing your service, and will not be a purely profit-making tool. You have provided no economic rationale for the amount you will charge for your services. You have provided no financial studies or other information that would justify the amount of any particular fee. Therefore, you have met many of the factors cited in Airlie Foundation v. Commissioner, *supra*, demonstrating a commercial manner of operation.

Your financial structure does not resemble that of a typical charity because it primarily relies upon revenues earned by selling your bankruptcy certification services to the public. In fact, you do not solicit and do not plan to solicit contributions from the public. Thus, you are unlike the organizations described in Consumer Credit Counseling Service of Alabama, Inc. v. United States, *supra*, which received the bulk of their support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way. These organizations only received an incidental amount of their revenues from fees. Therefore, you are operated in the manner of a trade or business.

You are similar to the organization described in B.S.W. Group, Inc. v. Commissioner, *supra*, where the court cited the lack of solicitation and sole support from fees as negative factors for recognition of tax exemption. Your activities constitute the conduct of a trade or business that is

ordinarily carried on by commercial ventures organized for profit. Your primary purpose is not charitable or educational, but rather commercial. Like a for-profit business, the vast majority of your revenues are from fees paid by those who receive pre-bankruptcy counseling services from you. While charitable institutions often do provide services to individuals, the cost is generally subsidized by contributors who do not receive anything in return. Your fees however, are set high enough to recoup all projected costs and to produce a profit.

Moreover, you represent that you will not limit your services to a particular charitable class of individuals such as minorities, low-income, or elderly. There are no limitations of your services, except with respect to those individuals and their families who would clearly benefit from those services. You will provide your services to individuals that have met with an attorney and are contemplating filing for bankruptcy. Therefore, you are unlike the organization described in Revenue Ruling 69-441, 1969-2 C.B. 115, which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed. The organization described in the Revenue Ruling 69-441 also provided educational and counseling programs free of charge. You state that you will waive your fees for those unable to pay. However, you have not made your fee waiver policy known to the public or informed the public the criteria you use in determining which clients qualify for counseling services free of charge. Thus, you have not provided evidence that your clients will ever receive free services, or services according to their ability to pay.

You are also unlike the organizations described in Revenue Ruling 78-99, Revenue Ruling 76-205, Revenue Ruling 73-569, Revenue Ruling 70-590, Revenue Ruling 70-640, and Revenue Ruling 68-71, *supra*, as you are not supported by contributions from the public and do not provide counseling services free of charge.

You do not operate a substantive on-going educational program. Your operational focus is on fees generated from the issuance of pre-bankruptcy certificates rather than on-going financial education for the general public. You do not intend to establish long term counseling relationships with your clients. As a matter of fact, you do not expect that the client counseling relationship to extend beyond the initial counseling meeting in most instances. You have also failed to substantiate that you follow an educational methodology. You do not conduct any educational programs for your clients outside of your pre-bankruptcy counseling session. You do not conduct any seminars, workshops, interactive on-line classes, or other educational forums on money management, consumer buying, budgeting, or financial management. Furthermore, the educational content of your counseling sessions is limited in scope and depth. Your 60 to 90 minute counseling session with your client consists of nothing more than reviewing the budget information provided by the client and allowing the client to decide on the appropriate course of action, including continuing with filing for bankruptcy. The administrative record demonstrates that your primary purpose is the sale of bankruptcy certificates for a fee rather than financial education of the public as a whole. Accordingly, we conclude that you have a substantial non-exempt commercial purpose. You are similar to the organization described in American Institute for Economic Research v. United States, *supra*, in which the court held that the organization's sale of publications and sale of advice for a fee to individuals, were indicative of a business. Therefore, the organization had a significant non-exempt commercial purpose that was not incidental to the exempt purpose, and was not entitled to be regarded as tax exempt.

You have not provided any information to indicate that you plan to dedicate significant revenues to activities involving educational and/or charitable programs. You do not allocate any expenses related

to public educational programs on your budgeted financial information such as workshops or educational forums. In having one paid counselor with no volunteers, and having no direct expenditures for charitable and educational purposes, you are similar to the organization described in Easter House v. United States, *supra*, where the court determined that the organization was not exempt because its conduct of adoption services activity was in furtherance of a non-exempt commercial purpose. Similar to adoption services, your provision of pre-bankruptcy filing certification services for a fee is operated to advance a substantially non-exempt commercial purpose.

Furthermore, section 501(q) of the Code requires that the organization must provide credit counseling services tailored to the specific needs and circumstances of consumers. Following the collection of financial information sufficient to prepare a budget and obtaining the responses to the six questions that you ask your clients, you inform your clients that they need to reduce debt and monthly expenses. The broad advice you offer your clients is applicable to any individual facing financial difficulty. You do not obtain information from the clients in sufficient detail to cultivate an understanding of the root causes of their financial predicament. In analyzing the budget information, you arrive at a conclusion that clients are in their current financial difficulty due to a lack of a financial plan. The options you provide are not tailored to fit each individual client's specific needs, goals and circumstances. Since you do not provide credit counseling services tailored to the specific needs and circumstances of consumers, you do not meet the requirements of section 501(q) of the Code.

Your governance structure violates the requirements of Section 501(q) of the code. Section 501(q) of the Code requires that at all times, the board of directors must be controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders. Not more than 20 percent of the voting power of the board of directors can be vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities. Furthermore, not more than 49 percent of the board may be employees of the organization, creditors, or those who will benefit financially. You indicated that you will compensate your counselor based on the industry standard. A serves as your compensated counselor in your pre-bankruptcy certificate program. A also functions as your sole board member, President, Secretary and Treasurer. As A is your sole board member and compensated employee, you are not controlled by persons who represent the broad interest of the public. In fact, 100 percent of the voting power of your board is vested in a person who is employed by you and who will benefit financially, directly or indirectly from your activities. Additionally, more than 49 percent of your board is also an employee or someone who will benefit financially. Therefore, you do not meet the requirements of section 501(q) of the Code.

A fundamental requirement for an organization that seeks exemption from federal income taxes is that it benefits the public rather than its creator, shareholders, or persons having a personal or private interest in the activities of the organization. (See section 1.501(c)(3)-1(c)(2) of the Regulations.) You have not shown that your organizational structure and manner of operation do not result in inurement to A in the form of an employment opportunity and compensation in accordance with section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. You are like the organization described in Revenue Ruling 61-170 in that you are formed for the purpose of providing an employment opportunity to your Founder, A.

Revenue Ruling 76-91, *supra*, explains that the presumption of an arm's-length arrangement is negated when the seller controls the purchaser. You are solely operated by A and all the decisions are made by A. Since both sides of the compensation negotiation consist of the same individual, there is an inherent conflict of interest in your compensation arrangement with A. Your compensation arrangement with A is not arm's length. Akin to the organization described in KJ's Fund Raisers, Inc. v. Commissioner, *supra*, even though you state that your Board of Directors will establish the salaries, given that A is your sole Board member, A is free to set policy for his own benefit without independent oversight.

You also resemble the organization described in Salvation Navy v. Commissioner, *supra*, in that you have not proved that your net earnings would not inure to the benefit of a private individual, your Board member, Officer and Founder. Hence, it appears that a substantial purpose of your organization is to serve the private benefit of A, resulting in prohibited inurement under section 501(c)(3) of the Code.

Finally, you have failed to describe your pre-bankruptcy counseling programs in sufficient detail to show that you are furthering an exclusively educational and or charitable purpose. As described in Harding Hospital, Inc. v. United States, Nelson v. Commissioner, Christian Echoes National Ministry, Inc. v. United States, and Revenue Procedure 2009-9, *supra*, the burden is on the applicant organization to demonstrate that it has met the operational test as specified under section 501(c)(3) of the Code. You did not provide any evidence that bankruptcy counseling will be an incidental adjunct to a substantial and substantive program of public education and individual counseling. You have provided no materials that indicate you will have a substantive on-going educational program directed to the individuals and families you serve in your bankruptcy certification program. You have not demonstrated how your 60 to 90 minute counseling session will educate individuals facing financial difficulty and assist individuals in paying creditors in full to prevent the filing of bankruptcy. Your primary goal and a majority of your time appear to be devoted to the provision of pre-bankruptcy certification program for a fee, thereby furthering a substantial non-exempt commercial purpose. You have not shown that you are not operated to serve the private benefit of your Board Member, Officer and Founder, A.

In summary, you do not meet the requirements under sections 501(c)(3) and 501(q) of the Code because you fail the operational test, you do not provide counseling tailored to the specific circumstances of each individual and more than 20 percent of the voting power of your Board of Directors is vested in persons who are employed by you and who will benefit financially, directly or indirectly from your activities. Because your primary purpose is to sell bankruptcy certifications rather than to educate and counsel the general public, we find that you operate for a substantial non-exempt commercial purpose. In addition, you have not shown that your operations do not result in inurement to your sole board member and officer in direct contravention of section 501(c)(3) of the Code. Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code or under any other section of the Internal Revenue Code.

Contributions to you are not deductible under section 170 of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement

does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Deliver to:

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert S. Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure: Publication 892